NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Teamsters Local No. 886, affiliated with International Brotherhood of Teamsters (United Parcel Service) and Michael D. Reynolds. Case 17–CB–6356

July 24, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On August 21, 2008, Administrative Law Judge James M. Kennedy issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board¹ has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions only to the extent consistent with this Decision and Order.

I. INTRODUCTION

We reverse the judge's finding that the Respondent did not violate Section 8(b)(1)(A) of the Act when one of its stewards, Wes Pruitt, told employee Michael D. Reynolds, in the presence of employee Thomas Hawkins, that it dropped Reynolds' grievances because the Company did not like him and because he ran against the Respondent's leadership in an intraunion election. The judge dismissed the complaint, finding that Reynolds could not have reasonably believed that Pruitt was acting

on behalf of the Respondent. The judge, however, did not analyze the issue of Pruitt's authority from Hawkins' perspective; in fact, the judge failed to consider Hawkins at all. The General Counsel excepts to that failure as well as to the judge's findings regarding Reynolds.

For the reasons discussed below, we find that an employee in Hawkins' position reasonably could have believed that Pruitt was acting on behalf of the Respondent. Accordingly, we find that the Respondent is responsible for Pruitt's statement by virtue of his apparent authority, irrespective of any potential actual authority. The Respondent, therefore, violated the Act.³

II FACTS

The relevant facts, more fully set forth in the judge's decision, are summarized as follows.

Michael Reynolds worked at United Parcel Service (UPS) for about 5 years. He had been a member of the Respondent Union for 23 years, covering his employment at UPS as well as prior employment at another company, and had served as a steward or alternate steward at both companies. Reynolds' service as a union steward was about 6 years in total, but he had not held such a position since June 2007. In November 2007, Reynolds ran unsuccessfully for the position of trustee in an internal union election.

Thomas Hawkins worked at United Parcel Service and was a member of the Respondent for 17 years. Hawkins testified that he had neither held nor sought a position with the Respondent at any time during his tenure at the Company and that he was not familiar with the Respondent's bylaws.

On January 28, 2008, Reynolds was in the office of Tommy Kitchens, one of the Respondent's assistant business agents. Also present were Hawkins and Wes Pruitt.⁴ Pruitt, a steward for the Respondent, had been part of the slate that defeated Reynolds in the recent un-

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

² The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ Given our finding that the Respondent violated Sec. 8(b)(1)(A) with regard to Hawkins, we find it unnecessary to pass on the General Counsel's exceptions to the judge's finding that the Respondent did not violate Sec. 8(b)(1)(A) with regard to Reynolds. Such a finding would be cumulative and would not materially affect the remedy. Although it is unnecessary to pass on the judge's finding that Reynolds would not perceive Pruitt's remark to him as coercive, Member Schaumber observes that the test for determining whether Sec. 8(b)(1)(A) has been violated is an objective one that does not turn on evidence that the particular employee was actually restrained or coerced by a union agent's statement but, rather, on whether the statement would have a reasonable tendency to restrain or coerce employees in the exercise of their statutory rights. Letter Carriers Branch 3126 (Postal Service), 330 NLRB 587, 587–588 (2000); Steelworkers Local 1397 (U.S. Steel Corp.), 240 NLRB 848, 849 (1979).

⁴ Although the judge's decision does not state that Pruitt was in Kitchens' office during this conversation, Kitchens, Hawkins, and Reynolds each testified that Pruitt was there.

ion election. Reynolds asked Kitchens about the status of two grievances he had filed in November 2007. Kitchens responded that the Respondent had declined to go forward with either grievance because there had been no contract violation.

The day after that conversation, Reynolds encountered Pruitt in the break room, where he was sitting with Hawkins and another employee. Reynolds and Pruitt began a conversation, overheard by Hawkins, about Reynolds' grievances. Pruitt told Reynolds, "You lost your grievances because the Company doesn't like you and you ran against them."

III. THE JUDGE'S FINDINGS

The judge found that Pruitt made the statement attributed to him by Reynolds and Hawkins, but found that Pruitt did not possess actual or apparent authority to do so on behalf of the Respondent.⁶ Regarding apparent authority, the judge found that Reynolds could not have reasonably concluded that Pruitt was speaking for the Respondent for two main reasons.⁷ First, the judge pointed to Reynolds' knowledge of the Respondent's 1977 decision to change its bylaws to include the following language:

Stewards are not officers or agents of the Local Union. . . . A steward may take action to represent an aggrieved member by presenting the member's grievance to the Employer's designated representative. If this does not result in an answer that is satisfactory to the member, the member may request further representation by his Business Agent or the President. . . Any other action of a steward by oral or written communication shall not be authorized by this Local Union nor shall this Local Union be liable for any such written or oral communications.

The judge accepted the Respondent's contention that this language was intended to convey the limited nature of stewards' authority. According to the Respondent, the new language was added in response to an adverse Board decision, Teamsters Local Union 886 (Lee Way Motor Freight), 229

NLRB 832 (1977), enfd. mem. 586 F.2d 835 (3d Cir. 1978), which is discussed below.

Second, the judge cited the "unusual circumstances" concerning Reynolds, including his knowledge that: (1) Pruitt only pretended to have inside information concerning why Reynolds' grievances had been dropped; (2) Pruitt did not participate in Reynolds' grievances in any way; (3) the bylaws and collective-bargaining agreement limited the grievance-processing authority of stewards; (4) his grievances had been found to be without merit before Pruitt made the statement; and (5) Reynolds knew that Pruitt was speaking only for himself and not the Respondent. In those circumstances, the judge concluded that "the General Counsel's implied/apparent authority argument relating to Pruitt's purported agency status is not viable."

However, the judge did not analyze the issue vis-à-vis Hawkins.

IV. ANALYSIS

As the judge pointed out, the Board was faced with similar facts in the Lee Way Motor case that assertedly precipitated the change in the Respondent's bylaws. In that case, a steward for the Respondent told an employee who had requested an investigation into a union election, "If you should get fired there will be no one [to] back you." 229 NLRB at 832 (1977). Applying agency law, the Board rejected the Respondent's argument that its steward was acting outside the scope of his authority, as defined in the bylaws and collective-bargaining agreement. Instead, the Board found that the steward was acting within the general scope of his grievance-processing authority. Id. at 833. The Board pointed out that the steward was expressly authorized to receive, process, investigate, and insure employer compliance on employee grievances and to transmit authorized messages from the Respondent, so long as the messages were in writing or of a routine nature. Id. Although stewards were not empowered to refuse to accept a grievance, there was no evidence that employees knew or should have known that that was the case. Id. Accordingly, the Board found:

[R]ank-and-file members of Respondent, when faced with statements of Respondent's stewards that the Union would get them fired and/or not represent them,

⁵ It is not known whether the other employee present heard any of the conversation. He was not called to testify.

⁶ The judge credited Reynolds based on Hawkins' corroborative testimony that, when Reynolds asked Pruitt why the Respondent had "dumped his grievances," Pruitt responded, "[B]ecause he ran against them and the company didn't like him." No party disputes that such a statement is unlawful. See *Steelworkers Local 1397*, supra at 849.

⁷ Although we are not passing on the judge's finding that the Respondent did not violate Sec. 8(b)(1)(A) with regard to Reynolds, we describe the judge's reasoning here because the Respondent argues that it applies to Hawkins as well.

would believe these statements or threats to have meaning as they were coming from an agent whose basic responsibility was that of administering the grievance machinery on behalf of the Union. The threats of [the steward] were therefore in the area of his apparent authority as steward and he, by virtue of his stewardship, was apparently capable of effectuating them. [Id.]

Applying *Lee Way Motor* here leads to the same result. As in that case, the current bylaws and collectivebargaining agreement authorize a steward to receive, investigate, and process grievances and to transmit authorized messages that are in writing or of a routine nature. Pruitt's statement, which purported to convey the reasons why the Respondent dropped Reynolds' grievances, is even more squarely within the ambit of grievance processing than the steward's statement in Lee Way Motor. Moreover, like the steward in that case, Pruitt is an agent whose basic responsibility is to administer the grievance machinery. Therefore, as in Lee Way Motor, we find that Pruitt's statement was "in the area of his apparent authority as steward and he, by virtue of his stewardship, was apparently capable of effectuating [it]." Id.

Accordingly, an employee like Hawkins could have reasonably believed that Pruitt was acting on behalf of the Respondent when he made the statement linking Reynolds' protected activity with the Respondent's refusal to process his grievances. The statement, therefore, violated the Act.⁸

In its defense, the Respondent contends that Hawkins was essentially in the same position as Reynolds with respect to his knowledge of both the changes to the bylaws and the purported limits on the authority of stewards. Neither assertion is supported by the facts or the law.

The Respondent's reliance on the 1977 changes to its bylaws is misplaced. There is no evidence that Hawkins was even aware of the changes to the bylaws or the Respondent's reasons for making them. Moreover, as the General Counsel points out, those changes did not curtail a steward's authority in any meaningful way. First, the bylaw's inclusion of the statement that "stewards are not officers or agents" is completely at odds with the fact that the Respondent has specifically authorized stewards to process grievances. Second, and contrary to the Respondent's assertion, the language stating that a member "may request further representation by his Business Agent or the President" does not expressly limit a steward's participation to the initial grievance steps. Third, the provision purporting to disclaim the Respondent's liability for a steward's unauthorized communications is not determinative under the common law of agency where, as here, the steward is empowered generally to act in the area of grievances. See Longshoremen ILWU (Sunset Line & Twine Co.), 79 NLRB 1487, 1509 (1948) (a principal may be responsible even when it has "specifically forbidden the act in question . . . if the principal actually empowered the agent to represent him in the general area within which the agent acted").

Nor is there any foundation for the Respondent's contention that Hawkins, like Reynolds, knew or should have known that Pruitt had exceeded his authority. Unlike Reynolds, who had been a steward for 6 years, Hawkins neither held nor sought a position with the Respondent at any time during his 17 years with the Company. He testified that he was not familiar with the Respondent's bylaws. Finally, there simply is no support in the record for finding that Hawkins knew, as Reynolds may have, that Pruitt was only speaking for himself or that Pruitt was only pretending to have inside information about the grievances.

CONCLUSION OF LAW

By telling an employee, in the presence of other employees, that the Respondent dropped his grievances because he had opposed the Respondent's leadership in an internal union election and because the Company did not like him, the Respondent has restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) of the Act.

⁸ The complaint allegation was not limited to whether Reynolds was coerced but alleged that the Respondent, by Pruitt, "told employees that Respondent refused to process certain grievances because the employee involved . . . previously opposed the current officials of Respondent in an . . . election and because the Employer's officials did not like the employee," which "has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act." Further, it is irrelevant that Pruitt's remark was directed to Reynolds, not Hawkins, and the Respondent does not contend otherwise. See *Electrical Workers Local 1049 (Tower Landscaping)*, 324 NLRB 347 (1997) (threat violated Sec. 8(b)(1)(A) even though not made directly to employees because "it was overheard by them and could reasonably be viewed as a threat to their Section 7 rights"); see also *Exterior Systems, Inc.*, 338 NLRB 677, 679 (2002) (threat violated Sec. 8(a)(1) in similar circumstances).

⁹ The Respondent asserts that Hawkins, by virtue of his 17 years with the Company, either knew or should have known that the bylaws and collective-bargaining agreement limited the authority of stewards. The Board, however, has never charged an employee with knowledge of his bargaining representative's bylaws or a collective-bargaining agreement based solely on the employee's status or tenure.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The Respondent, Teamsters Local No. 886, affiliated with International Brotherhood of Teamsters, Oklahoma City, Oklahoma, its officers, agents, and representatives, shall

- 1. Cease and desist from
- (a) Telling employees that it dropped an employee's grievances because the employee had opposed its leadership in an internal union election and because the company did not like the employee.
- (b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days after service by the Region, post at its offices and meeting halls copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 24, 2009

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell employees that we dropped an employee's grievances because the employee opposed our leadership in an internal union election and because the company did not like the employee.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

TEAMSTERS LOCAL NO. 886, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Charles T. Hoskin Jr., for the General Counsel.

George McCaffrey, of Oklahoma City, Oklahoma, for the Re-

Michael D. Reynolds, pro se, of Choctaw, Oklahoma.

DECISION

STATEMENT OF THE CASE

James M. Kennedy, Administrative Law Judge. This case was tried in Oklahoma City, Oklahoma, on July 22¹ and October 3, 2008,² based on a complaint issued May 29, by the Regional Director for Region 17 and amended at the hearing.³ The underlying unfair labor practice charge was filed by Michael D. Reynolds, an individual (Reynolds or the Charging Party), on February 28 and amended on April 29. As amended, the complaint alleges only that Teamsters Local No. 886, affiliated with International Brotherhood of Teamsters (Respondent) made a threat in violation of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). Respondent avers that the conduct never occurred or, if it did, it is not legally responsible, as

¹⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹ On the hearing's first date, July 22, I approved a settlement agreement. After reconsideration, I withdrew my approval and permitted the matter to go forward.

All dates are 2008, unless otherwise stated.

³ On October 3, upon the resumption of the hearing, the General Counsel amended the complaint by striking par. 6 in its entirety. Thus, only the allegation found in par. 5 remains.

the utterance was made by an individual who was not its employee, its agent or its apparent agent.

Issues

The first issue, one of credibility, is whether Shop Steward Wes Pruitt told Reynolds that Respondent had not processed certain grievances because Reynolds was a political opponent of Respondent's then newly elected officers and because the Employer did not like him. Only if one concludes that the utterance was made is it necessary to determine whether Respondent is legally responsible for it and obligated to remedy it, but even in that event, one must first determine whether the statement restrained or coerced Reynolds as defined in Section 8(b)(1)(A).⁴

I. JURISDICTION

Respondent admits that the Employer, on whose premises the alleged unfair labor occurred is United Parcel Service (UPS), an Ohio corporation, and that UPS is an interstate shipper which has operations in and around Oklahoma City. As the Employer's operation in Oklahoma derives gross revenue in excess of \$50,000 for freight shipments sent directly out of Oklahoma, Respondent admits that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Additionally, Respondent admits it is a labor organization within the definition of Section 2(5) of the Act. Therefore, the Board has jurisdiction over this matter.

II. THE UNFAIR LABOR PRACTICE EVIDENCE

A. The Testimony

As amended the complaint now makes only one discrete allegation. Paragraph 5 alleges:

On or about January 29, 2008, Respondent, by Pruitt, at the Employer's Oklahoma City facility, told employee[] [Reynolds] that Respondent refused to process certain grievances because the employee involved [Reynolds] previously opposed the current officials of Respondent in an intra-union election and because the Employer's officials did not like the employee [Reynolds].

Respondent is the collective-bargaining representative of United Parcel Service's employees employed in Oklahoma City. It has held that status for many years, certainly before its

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

bylaws were amended in 1977. UPS's Oklahoma City operation employs about 1000 represented employees in eight different locations. Altogether, Respondent serves its membership there through 20 to 25 working stewards. At one of those locations alone, the Oklahoma City hub, there are about 12 to 13 stewards. Both the Charging Party and Pruitt work at the Oklahoma City hub on nighttime shifts, although their workstations are not very close.

Reynolds has worked for UPS about 5 years, currently working as a loader/unloader and preloader. Reynolds had been a union steward or alternate steward at UPS for roughly the same amount of time. He has been a member of Local 886 for 23 years, covering earlier employment by Leeway Motor Freight/Consolidated Freightways. He had served as a steward at that employer as well. His total experience as a steward is approximately 6 years. In June 2007, he resigned his steward status as a condition of settling a grievance which arose after he lost his job over the manner in which he had handled a fellow employee's grievance. UPS had accused him of dishonest conduct in the manner in which he had performed that task. The Company offered reinstatement without backpay if he agreed to no longer serve as a steward. Both Reynolds and the Union accepted the condition.

In November 2007, an internal union election took place. Reynolds chose to support the so-called Stetson slate, seeking membership on the executive board as a trustee. That slate was defeated by the Loewenkamp slate, which currently holds office. The incumbents at that time were part of a third slate (the Robert Young group). Although the Loewenkamp winners were to take office in January 2008, there was a transition period during which the Loewenkamp group served as interim officials when the Young group declined to remain in office. Although the dates are not entirely clear, it seems that changes began taking place as early as December as interim assistant business agents began replacing the previous business agents. These interim (assistant) business agents included Steve St. Cyr and Tommy Kitchens, who later became the actual assistant business agents. St. Cyr had had previous experience as a business agent while Kitchens had been a steward for 27 years. The head of the slate. Randy Loewenkamp, became president and business agent.

Reynolds' Stetson slate, at least, harbored serious concerns over its loss and it eventually filed a protest with the United States Department of Labor challenging the results of the election. Hard feelings were/are no doubt involved. At the time of the instant hearing that challenge remained unresolved.

On November 18, 2007, Reynolds filed a grievance which has been variously styled as a "job bid grievance" or the "small sort grievance." In this grievance, Reynolds contended that he was entitled, due to seniority, to a job in the small sort department which had been held for about 3 years by Wes Pruitt. Pruitt, it will be recalled, is a union steward and had been for about 8 years. Pruitt had also been a part of the Loewenkamp slate. If successful, Reynolds would have displaced Pruitt in the small sort department, a job Reynolds described as "cushy."

There are a number of problems with this grievance visible at first glance. The first is timeliness. It targeted a job another employee had held for 3 years without complaint; Pruitt had

⁴ The pertinent portions of the statute: Sec. 8(b),

It shall be an unfair labor practice for a labor organization or its agents—

⁽¹⁾ to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7.

Sec. 7 states:

obtained it through the normal bid process which was open for all to see. And, if successful, where would the incumbent, Pruitt, go? St. Cyr said that if Pruitt had been ousted, he would have suffered a severe financial reverse. Second, both the timing and the target of the grievance suggest that it was filed in retaliation over the intraunion election, since Reynolds had campaigned for the loser and Pruitt for the winner. In addition, Reynolds well knew Pruitt was a Loewnkamp supporter because he had asked for Pruitt's vote and Pruitt had declined, saying he was voting for the Loewenkamp slate.

Reynolds filed the grievance by physically handing the completed form to the union steward responsible for his area, an individual named Tim Deckard. Because it was not a grievance which related to something which had happened on the floor, Deckard, following procedure, turned it into the union office where it would be handled by one of the assistant business agents.⁵

Then, on November 25, 2007, Reynolds filed a second grievance. This one concerned the assignment of work to a more junior employee, alleging that the work should have been assigned to him. Again, he gave the grievance form to Deckard. Since this was something which had occurred on the floor, Deckard took it to one of the company managers, Chris Blessington. Blessington considered it without merit and told Deckard to "go ahead and process it." As a result Deckard, as before, turned it in to the Union's office for processing in the usual manner.

Under the collective-bargaining agreement, this placed both grievances into the Local Level Hearing stage. This stage is sometimes called the prehearing. At this stage, twice a month Respondent's business agents—now St. Cyr and Kitchens would meet with the UPS Labor Relations Manager Matt Hoffman to resolve the grievances which had not been resolved on the floor. St. Cyr testified that both of Reynolds' grievances were scheduled to be processed on January 4, but due to the large number being presented that evening, only Reynolds' first grievance was processed. St. Cyr testified that Hoffman asserted that the grievance was untimely (being 3 years late) and in any event did not amount to a breach of the collectivebargaining agreement. Both St. Cyr and Kitchens said, after consulting, they agreed that no-contract violation had been made out. They chose to drop the grievance at that stage. Kitchens did not recall Hoffman making the timeliness argu-

Three days later, on January 7, according to Reynolds, he and Pruitt had a conversation in the break room. Pruitt denies the conversation ever occurred. Reynolds says Pruitt initiated it, telling him that he was being appointed the "chief steward." He went on to say that he was the "new sheriff in town," given the fact that Loewenkamp had won the election, and he would be taking over the investigation of Reynolds' grievances. Reynolds says he responded by saying that Deckard had already tried to settle them and he did not know what else could be investigated.

Reynolds' testimony here is somewhat odd. First, we know that the small sort grievance involving Pruitt's job had actually been dropped 2 days before. Presumably, the new "chief steward," would know that he had not been assigned a dropped case. so why would he be pursuing it? Second, Reynolds did not protest that Pruitt had a conflict of interest and should not be processing Reynolds' grievance at all since it sought to oust Pruitt from his job. The conflict was manifest. Why didn't Reynolds protest? Third, the union officials and Pruitt, as well as Reynolds, all testified that there had never been a chief steward position, that all the stewards were essentially the same and worked as a team. Reynolds, former steward that he was, and a political activist, did not question the creation of a "chief' steward position." He knew the collective-bargaining contract didn't provide for it, so what role would it play on the floor? Yet he did not ask Pruitt about the scope of this strange new union position. Reynolds' later testimony about the nature of the steward's duties demonstrated rather clearly that he knew stewards had limited authority. Did the new chief steward have greater authority in grievance processing than ordinary stewards? Would regular stewards report to Pruitt in some manner? Despite these obvious changes, Reynolds was incurious about all of them and asked Pruitt no questions.

On cross-examination, Reynolds added that Pruitt told him that he had the power to remove stewards from their job and that shortly afterwards two were. Reynolds says that Pruitt explained that they would be removed because he "didn't like them."

As noted, Pruitt denied that this conversation occurred. He said he had no conversations with Reynolds on January 7. In addition, he gave the following testimony:

- Q. [BY MR. MCCAFFREY] Now, I'm going to ask you some other things that he said that you said. Mr. Reynolds said that on January the 7th or thereabout that you came up to him and told him that you were the new Sheriff, that you were going to be the chief Steward. Did you ever say that to anybody, Mr. Reynolds or anybody else?
- A. [WITNESS PRUITT] No. We don't have a chief Steward. Every Steward is equal.
 - Q. But did you ever say anything like that?
 - A. No
- Q. I'm going to be the head-knocker Steward or anything like that?
 - A. No.
- Q. Did you tell him that you were going to be the new Sheriff or the new Police Officer?
 - A. No.
 - Q. Or anything like that?
 - A. No. No, I did not, would not have.
- Q. Did you ever tell him or anybody else that you were going to take over? This was in January of '07. You were going to take over the investigation of his two Grievances.
 - A. No

⁵ Deckard, at the time, expressed doubt about remaining a steward under Loewenkamp. Later, after resolving whatever concerns bothered him, he decided to remain in the position.

⁶ Apparently two stewards were relieved of their duties during this time frame, but the evidence is that the decision to remove them was made by a business agent, not Pruitt.

Q. Okay. Had you had anything to do—from the time the Grievance was filed to the time the Grievances were dropped in January of 2008 did you have anything whatsoever to do with the handling of either one of those two Grievances?

A. No, I've never had possession of the Grievances and never saw the Grievances.

Aside from Reynolds' testimony, there is no evidence that the Union ever created the position of chief steward. Certainly there is no evidence that Pruitt was ever appointed to such a position. Indeed, the steward structure remained the same as it had been before.

Reynolds also contends that a few days later Pruitt spoke to him in the break room and told him that he had spoken to Chris Blessington about the second grievance and that Blessington had told him that since everyone had appeared for work on the night in question he didn't believe he had to pay anyone else. As noted before, however, Pruitt denies any involvement whatsoever in either of the two grievances Reynolds had filed. Furthermore, it appears odd that Pruitt, rather than Deckard, would be reporting back the results of a conversation with Blessington. Since Deckard had taken the grievance initially, in all likelihood the only steward who spoke to Reynolds about it would have been Deckard. Deckard had remained in his steward's role despite his initial thought of resigning. I believe Reynolds to be mistaken about Pruitt's involvement here.

On January 25, another Local Level Hearing occurred. Once again the participants were Assistant Business Agents Kitchens and St. Cyr for the Union and Hoffman for UPS. During the session, Reynolds' second grievance was discussed. During the conference, the Union withdrew it convinced that what had occurred was not in violation of the collective-bargaining agreement.

According to Reynolds, on January 23 he had a conversation with Kitchens at the union hall about the status of his grievances. He says Kitchens informed him that the first grievance had been dropped and that there was "no grievance" with respect to the second. This conversation would appear to have occurred, not on January 23, but sometime after the January 25 Local Level Hearing. In any event, Reynolds asserts that when he protested, Kitchens agreed to investigate the matter further. Kitchens does not concur.

Kitchens testified that Reynolds asked him on January 28 about the status of both grievances. He says he told Reynolds that both had been dropped as there had been no contract violations. In fact, both grievance forms contain Kitchens' initialed note "NCV" (no contract violation) at the bottom dated January 4 and 25, respectively. He said that when he told Reynolds both grievances had been dropped, Reynolds responded he didn't have a problem with one of them, but he would file [unfair labor practice] charges over the other. When Reynolds then observed that he had not received any notification, Kitchens told him that the letters were being processed and would be sent out shortly. The Reynolds grievances were part of a large group of grievances and apparently about 70 letters needed to be prepared.

On January 31, Reynolds sent a certified letter to Respondent demanding to know the status of his two grievances. That letter appears to have crossed in the mail with the Union's letter to him that same day advising that the grievances had been heard and had been determined not to constitute a contract violation.

Meanwhile, on January 29 about 3 a.m., according to Reynolds, he was once again in the break room. While there he encountered Pruitt. Sitting with Pruitt at the same table was Thomas Hawkins who gave testimony regarding what he overheard⁷ and another individual who may or may not have heard, Aaron Veasey. Veasey was not called to testify.

Saying he was aware that Pruitt had been involved in some "intent to term[inate]" grievances, Reynolds opened his conversation with Pruitt by saying, "I hope you didn't get [f-ked] like I did." Pruitt responded that all of them had been reduced to a final warning. Then, according to Reynolds,

[Pruitt] said—as to my Grievances he said—as to the one about him working in a cush job over me he said that his bid said other duties as assigned.

I responded to Mr. Pruitt, said "no, that's bullshit. All bids say other duties as assigned." I moved forward to him and he looked at me and said, "You lost your Grievances because the Company doesn't like you and you ran against them."

The transition from the discussion about what success Pruitt had had in dealing with other grievances to Pruitt's comment about the lack of merit in Reynolds' grievance which sought to take Pruitt's job is ill-explained. By that date, Reynolds knew his grievance involving Pruitt's job had failed. Moreover, despite Reynolds' testimony that Pruitt had somehow become involved in that grievance as a steward, there is really no credible evidence that Pruitt ever had. Both St. Cyr and Kitchens testified that to their knowledge Pruitt played no role in the processing of either of Reynolds' grievances. Pruitt does acknowledge that at some point he learned that Reynolds had filed a grievance which if successful would have caused him to lose his job. He also acknowledges that he does not "particularly like" Reynolds. Therefore, it is entirely possible that Pruitt could have raised the subject of the grievance with Reynolds.

Pruitt's seatmate in the break room, Hawkins, corroborates Reynolds. Hawkins's testimony:

- A. I was in the break room at UPS. It was a few days later. I was talking with Wes about some things that were going on at work and Mr. Reynolds did walk into the break room and started talking to Wes and about these Grievances.
 - Q. Did you recall what Mr. Reynolds said?
- A. Not exactly. I do know he asked him why the union dumped his Grievances.

⁷ Hawkins had also been present during the January 28 conversation which occurred between Kitchens and Reynolds.

⁸ The testimony states:

Q. Were you aware, in fact, he tried to get your job?

A. [WITNESS PRUITT] I was informed of that, yes, through a Griev ance.

Q. And did Mr. Pruitt respond to that?

A. He said that they had dumped them because he ran against them and the Company didn't like him.

Each of the witnesses who had knowledge about the manner in which stewards perform their duties said that stewards were obligated to accept and to take at least some preliminary steps to address every grievance filed on the floor, usually by taking it up with a manager. This was the accepted procedure even if the steward believed that the grievance was without merit. Once that step failed or received a rejection, the steward was to transmit the grievance to the union office where it would be assigned to an assistant business agent. At that point, the steward's duties were over. Thus, it would appear that there is a well-ensconced culture that stewards accept every grievance which an employee insists pon filing. This is done without regard to personal likes or dislikes, without regard to race, gender, or union membership and without regard to the steward's personal opinion of the validity of the grievance. In that context, Pruitt denied making the statement attributed to him by Reynolds as supported by Hawkins. Pruitt testified:

Q. [BY MR. MCCAFFREY] Mr. Pruitt, Mr. Reynolds is saying that you said a bunch of things and I want to ask you. He basically said that on January the 28th or 29th, somewhere along in there that you told him that his Grievances had been dropped because the Company didn't like him and because he ran against them.

I want to ask you. I want you to turn to the Judge. Just look him in the eye and tell him. Did you ever have a conversation with Mr. Reynolds or anyone else in which statements like that were made?

A. [WITNESS PRUITT] At any time I never made a statement like that to Mr. Reynolds. That would be detrimental on my part. Never would I make a statement like that. First off is that would be damaging the Local Union and that's against every—everything that a Steward is doing. We're supposed to support the Local Union. I wouldn't make a statement like that towards him.

Standing by itself, I find Pruitt's response to be eminently reasonable and perfectly credible. It is consistent with the culture of the Employer's workplace insofar as stewards are concerned. Had Hawkins not corroborated Reynolds, I would have no difficulty crediting Pruitt over Reynolds. However, Hawkins did so. Furthermore, there is no evidence that Hawkins is in league with Reynolds. His presence that evening discussing matters with Pruitt was unrelated to anything that Reynolds had done previously, although it is true that Hawkins happened to be present at the union office the day before when Reynolds asked Kitchens about the status of his grievances. Hawkins therefore might have had an inkling of Reynolds' purpose.

Nevertheless, the record does not permit an outright rejection of Reynolds' testimony about what Pruitt told him. Given the fact that Reynolds' small-sort grievance was designed to oust Pruitt from his job, it is not unreasonable that Pruitt would harbor some sort of animosity toward Reynolds. That animosity did not arise from the fact that Pruitt was the steward, but from the fact that he perceived Reynolds was trying to steal his job; furthermore from Pruitt's point of view Reynolds was abusing

the grievance procedures. Pruitt no doubt believed, rightly, that his 3-year incumbency warranted no inquiry into the bid process at that late date. Given such concerns, it does appear likely that Pruitt made the remark attributed to him by Reynolds and Hawkins.

Accepting as a fact that Pruitt told Reynolds that he had lost his grievances because he had run against the current union administration and because the Company didn't like him, we must now make an inquiry concerning whether the Union is legally responsible for his statement. I have already, in passing, discussed the general manner in which stewards perform their duties. Additional facts relating to union responsibility requires a discussion of not only those already-adduced facts, but an inquiry into the Union's bylaws and the collective-bargaining contract, because both of those documents delineate the extent of a steward's authority.

B. The Union's Bylaws and Collective-Bargaining Contract Provisions

Concerning the Agency Status of its Stewards

In 1977, Respondent was found to have committed an unfair labor practice in almost the same circumstances as those alleged here. The case is *Teamsters Local 886 (Lee Way Motor Freight)*, 229 NLRB 832 (1977), enfd. mem. 589 F.2d 1116 (D.C. Cir. 1978). Judge Henry L. Jallette had recommended that the complaint be dismissed on the grounds that the steward who had made the threats in question was acting outside the scope of his authority. The Board, applying agency law, reversed and found a violation of Section 8(b)(1)(A) of the Act. Among other things, the Board reviewed Respondent's bylaws and the applicable collective-bargaining contract where the authority of stewards was described. The Board found that there were no real limitations on a steward's authority, and applied ordinary principles of agency, including the familiar implied and apparent authority concepts.

The Union's general counsel then was George McCaffrey. McCaffrey served as its general counsel from 1967 to 2002. Indeed, it is McCaffrey who represents Respondent here. He called himself as a witness and gave testimony concerning the modifications made to the bylaws as a result of the decision in the Lee Way case. The purpose of the changes, he said, were to clearly specify that stewards were not union agents and to ensure that the Union would not be held liable for unauthorized statements uttered by its stewards. In 1977, he said, the Union took steps to change its bylaws to more clearly demonstrate the limited authority stewards actually have. As of the date of the instant alleged unfair labor practice, January 2008, the amended bylaws had been in effect for over 30 years. Indeed, it appears that Reynolds has been a member of the Union for 23 of those years, 6 as steward (1 for Consolidated Freightways and 5 for UPS).

Section 13 of the bylaws describes the authority and duties of business agents and stewards. Subparagraph B focuses on stewards. Under that section the steward can either be elected or appointed. He has responsibility for the union membership of the people with whom he works as determined by the collective-bargaining contract, but is not authorized to collect dues or

handle funds. He is to post on the bulletin board notices and information received by him from the Local. More specifically, the paragraph goes on to say "job stewards have no authority to take strike action or any other action interrupting the employer's business, except as official action authorized by the Local Union. A steward may take action to represent an aggrieved member by presenting the member's grievance to the Employer's designated representative. If this does not result in an answer that is satisfactory to the member, the member may request for the representation by his business agent or the president. A steward shall have his dues paid as compensation for performing the duties outlined herein. Any other action of a steward by oral or written communication shall not be authorized by this Local Union nor shall this Local Union be liable for any such written or oral communications." (Emphasis added.)

Similarly, the collective-bargaining contract between Respondent and UPS also delineates a steward's authority. Article 4, entitled, "Stewards" is slightly different but still to the same general tenor. In pertinent part it reads:

The Employer recognizes the right of the Local Union to designate Job Stewards and alternates from the Employer's seniority list. The authority of Job Stewards and alternates so designated by the Local Union shall be limited to, and shall not exceed, the following duties and activities:

- (a) The investigation and presentation of grievances with the Employer or the designated company representative in accordance with the provisions of the collective bargaining agreement:
- (b) The collection of dues when authorized by appropriate Local Union action; and
- (c) The transmission of such messages and information, which shall originate with, and are authorized by the Local Union or its officers, provided such messages and information:
 - (1) have been reduced to writing; or
- (2) if not reduced to writing, are of a routine nature and do not involve work stoppages, slowdowns, refusal to handled goods, or any other interference with the Employer's business. [Emphasis added.]

The upshot of these two sources is that union stewards are obligated to carry out representational functions relating to grievances, but their authority is very limited. If they cannot resolve an issue on the floor, they must turn the matter over to the business agents. Clearly, they have no authority to make oral or written communications on behalf of the Union; furthermore, they may not carry messages for the Union unless it has originated or been authorized by the union's officers and are also in writing. The only exception is that routine matters may be transmitted so long as they do not involve interference with the employer's business.

Initially, Reynolds asserted that he was familiar with Respondent's bylaws. Yet, he also said that he was unfamiliar with that portion of the bylaws dealing with the powers and duties of stewards. He even went so far as to say that he had never seen a copy of the bylaws. He claimed ignorance regarding the language imposing limitations on the authority of job

stewards. He was more familiar with the language found in article 4 of the collective-bargaining contract. Curiously, that is the language which imposes the strongest limitation. There, a steward may not speak for the Union and may not even transmit messages unless they are in writing or are of a routine nature.

I find that Reynolds' testimony concerning his knowledge of the duties and powers of a union steward to be either disingenuous or the product of true indifference toward an institution which he has sought to help govern. I find the latter to be unlikely. Based on McCaffrey's testimony, it is quite clear that stewards are regularly trained by the union hierarchy and that mandatory classes are given regularly to bring stewards up to speed; not only does the Union encourage its stewards to attend, but it pays them for their time in doing so. Given his high interest and his reasonably lengthy steward experience and the mandatory nature of the training, I am confident the Charging Party has attended those classes and read the bylaws.

Reynolds does agree that based on the bylaws, stewards are not officers of the Union. With that amount of understanding, his claim of ignorance concerning those provisions of the bylaws describing the steward's duties and authority seems insincere. I find, therefore, despite his protestations to the contrary, that he knows exactly what limitations the bylaws and the collective-bargaining agreement impose on stewards.

III. LEGAL ANALYSIS

Having found, as the General Counsel has alleged, that Pruitt made the statement attributed to him by Reynolds, and corroborated by Hawkins, the next question is whether it had a reasonable tendency to restrain or coerce the employee to whom the remark was directed.

First, I am of the view that the remark was not truly perceived by Reynolds as something the Union actually did. In fact, because Reynolds well knew that Pruitt had been the target of Reynolds' small sort grievance, he must have known that Pruitt knew what Reynolds had been attempting to do. Any minimal understanding of human nature would lead one to understand that the acknowledged victim of such a move would harbor some resentment toward the individual responsible. That would be true whether the target of the grievance was a rank-and-file employee or a union steward. Furthermore, there is no evidence whatsoever that Pruitt participated in Reynolds' grievances at any stage or in any way. Plus, Reynolds was fully aware that the steward on the floor did not normally participate in that upper level of the decisionmaking process. He had never done so when he was a steward and he knew Pruitt would not have done so, either.

Second, I find that Pruitt, when he made the statement, was speaking only for himself, not the Union and that Reynolds knew it. It was certainly not something of a routine nature which a steward might say. Pruitt was responding to what he perceived as, probably correctly, Reynolds' unbrotherly (in a union sense) behavior. At the same time, Reynolds was going through a bitter calculus of his own. He was still resentful over losing his stewardship and losing his bid for election to union office. Pruitt, conveniently, was a symbol of both—part of the Loewenkamp group and a steward. And, just the day before, he had learned from Kitchens that his grievances had been found

to be without merit, prompting him to protest that he would file charges. The next day, when the equally-provoked Pruitt made his remark, it gave Reynolds grounds to retaliate. He realized he could spank the Union with Pruitt's words. To do that, however, he had to characterize Pruitt as a union agent, so that the Union would become vicariously liable for what Pruitt had said.⁹

The simple way to do that was to claim that stewards are agents of the Union for whom they provide service, but he needed to conceal what he actually knew about their authority to make himself more appealing as an innocent victim. Reynolds therefore claimed ignorance of any union rules concerning whether stewards are agents whose acts may be imputed to the Union.

But, it will be recalled, there is more to Reynolds' claim. At this point, it is appropriate to recall Reynolds' testimony that Pruitt had declared himself to be in a special status—that of "chief steward." As before, I find this assertion to be part of Reynolds' carefully thought-out calculus. To make his story more credible, he had to suggest that Pruitt was not just a regular steward whose duties were circumscribed by both the bylaws and the collective-bargaining contract. He had to inflate Pruitt's authority. He accomplished that by claiming, falsely, that Pruitt had told him that he was going to be the chief steward who had so much power he could relieve stewards of their duty. But, this was a job which had never existed before, was not created, and does not exist now except as part of Reynolds's plan to get even. He also pointed out (for he had lost the benefit) that stewards receive an emolument for their services in the form of credit for union dues. That fact made it appear as if the stewards have special status, one that approaches being an employee of the Local. More likely, it is only an inducement to encourage members to perform this time-consuming task.

In reality, Reynolds was under no illusions that Pruitt was speaking for the Union. He knew Pruitt was speaking only for himself. It is true that Pruitt pretended to have inside information concerning why Reynolds' grievances had been denied. And it is no doubt true that Pruitt wanted to harshly chastise Reynolds. But that does not help the General Counsel's case. To paraphrase the Restatement of Law (Third) of Agency §§ 2.03 and 3.03 (2006), describing the concept of apparent authority and the creation of apparent authority, one must show a manifestation by the principal, here Respondent, that the putative agent has the authority to act on the principal's behalf and the third party (Reynolds) reasonably believes the actor (putative agent, here Pruitt) is authorized and the third party's belief is traceable to the manifestation. Reuschlein and Gregory on Agency and Partnership § 97, p. 163 (1978), say the same thing, slightly differently: "Where a third party has actual knowledge that the agent is not authorized, the principal will

not be liable If the third party is aware of the principal's specific directions to his agent (here, the bylaw rules and the collective-bargaining contract's limitations), he cannot recover."

Therefore, the mere fact that Pruitt utilized his status to make his remark sting the harder is not evidence that he was speaking on behalf of the Union. In a way, this is nothing more than an application of the old black letter rule in law that one cannot prove agency out of the mouth of the putative agent. ¹⁰

As I have found, Reynolds already knew the truth. Kitchens had informed him of the reasons his grievances were found to be without merit. Kitchens was a source of accurate information. He was a business agent; he participated in the local area hearing; and it was he, together with St. Cyr, who decided that the Employer's responses to the grievance were valid. Revnolds knew, or should have known, that Kitchens could be relied upon for accuracy. But he was mad at Kitchens and he wanted Kitchens (and the new union officers) to feel his anger, too. Whatever Pruitt had said, Reynolds knew it came from an individual who had no knowledge whatsoever about the reasons for the Union's decision; he also knew Pruitt had no actual authority to speak. Finally, Reynolds did not in any way believe that the Union had given any sort of manifestation that Pruitt was authorized to speak for the Union; certainly there was none for him to rely on.

Moreover, Reynolds knew Pruitt had said nothing which would actually have an impact on his exercise of the rights guaranteed him by Section 7 of the Act. I find that it is not reasonable, in these unusual circumstances, to conclude that Pruitt's statements somehow interfered with and restrained Reynolds in the exercise of his Section 7 right to file grievances.

Accordingly, the contention that the Union is responsible under a vicarious liability theory of Pruitt's agency does not hold water. On the most basic level, the Union never authorized Pruitt to make such a statement to Reynolds. It had no idea that he would do so. In that regard, it is unlikely that anyone, aside from persons connected to Reynolds, would perceive that Reynolds' grievance would provoke Pruitt in the manner that it did. In addition, no one could reasonably anticipate that Reynolds would take advantage of that in order to deliver his own blow which combined elements of vengeful animosity aimed in several directions. First, Reynolds was unhappy about the loss of his campaign slate, costing him an opportunity to be a union trustee. Second, this was followed by the Union, through Kitchens, finding no merit in either of his grievances, one of which was his effort to obtain Pruitt's job. Third, he was unhappy with Pruitt generally, because Pruitt held the job that Reynolds believed he should hold and because Pruitt was part of the winning group and was a steward having the winners' support. All of these factors conflated themselves into a scheme whereby he could regain some measure of self-worth. If he couldn't have Pruitt's job, at least he could slap Pruitt and Union simultaneously with one accusation.

⁹ Although in the abstract this sounds improbable for someone of Reynolds's background, he should not be underestimated. I note that he is reasonably steeped in Local 886 lore. As a trained steward he undoubtedly knew of the 1977 case against the Union where a steward was found to be an agent for statements he made and the Union liable therefor. It was an easy script to replicate.

¹⁰ See, for example, Judge Thomas A. Ricci's statement in *Gilberton Coal Co.*, 291 NLRB 344, 357 (1988), and his similar statement in *Corry Contract, Inc.*, 289 NLRB 396, 403 (1988).

As Pruitt was acting only for himself and since Reynolds knew it, the General Counsel's implied/apparent authority argument relating to Pruitt's purported agency status is not viable. Reynolds was not misled about Pruitt's apparent authority by virtue of his stewardship. Instead, he took advantage and manipulated the facts to make it appear he had no knowledge of Pruitt's lack of authority.

I find that the evidence supplied by Reynolds in support of the General Counsel's case is made of whole cloth. I shall recommend that the complaint be dismissed.

Based on these findings of fact, legal analysis, and the record as a whole, I make the following

CONCLUSIONS OF LAW

- 1. United Parcel Service is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Counsel has failed to prove that the statement Pruitt made to the Charging Party had the reasonable tendency to restrain or coerce him in the exercise of his rights guaranteed by Section 7 of the Act and therefore the statement cannot constitute a violation of Section 8(b)(1)(A) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The complaint is dismissed.

Dated, Washington, D.C. December 18, 2008

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.